



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
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January 23, 2018

**By ECF**

The Honorable Joseph F. Bianco  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 11722

Re: King v. Thermo Fisher Scientific Inc.,  
Civ. No. 18-CV-399-JFB

Your Honor:

On January 19, 2018, Petitioner Kathy Drew King, the Regional Director of Region 29 of the National Labor Relations Board (herein called the Board), filed a Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act seeking interim relief from Respondent Thermo Fisher Scientific Inc.'s serious unfair labor practices, which include Respondent's termination of an employee who initiated and led a campaign to organize a union. On the same day, January 19, 2018, Your Honor issued an Order to Show Cause requiring Respondent to file an answer to the Petition on or before February 2, 2018, and scheduling a hearing to take place on February 9, 2018 at 1:00 PM.

On January 22, 2018, as a result of an indefinite furlough of federal employees due to a lack of appropriated funds, Petitioner filed a Motion to Postpone and Hold in Abeyance Further Proceedings in this matter. On the same day, January 22, 2018, Your Honor granted Petitioner's request and ordered Petitioner to notify the Court when Congress appropriated funds permitting Board attorneys to resume work.

In the evening of January 22, 2018, the President signed H.R. 195 into law. That law appropriates funding to various agencies of the federal government, including the Board, through February 8, 2018.

On January 23, 2018, Your Honor issued an Order requiring Petitioner to submit a status report informing the Court of the status of this case by February 2, 2018. This letter addresses Your Honor's request.

Beginning on January 23, 2018, after funds were appropriated to the NLRB and the government shutdown ended, Board attorneys, including the undersigned, resumed work. Petitioner continues to be willing to enter into a settlement that would resolve both the instant proceeding before Your Honor, as well as the underlying administrative proceeding, but it

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appears that no settlement is imminent. Petitioner continues to seek injunctive relief. For these reasons, Petitioner requests that Your Honor resume the proceeding.

Additionally, Petitioner respectfully requests that Your Honor consider rescheduling the hearing to take place one day earlier than the currently scheduled date of February 9, 2018, or on any earlier date on which Your Honor is available. The reason for this request is that there exists a very real possibility that the federal government's funding will lapse again on February 8, 2018, just one day prior to the presently scheduled hearing date, and Board Attorneys will, once again, be precluded from working while there is no appropriation of funds. This contingency would likely result in another request by Petitioner to hold this matter in abeyance and could thereby delay a matter that demands urgent attention. *See Kaynard v. Palby Lingerie, Inc.*, 625 F.2d 1047, 1055 (2d Cir. 1980)(noting that the passage of time permits those violating the Act to "accomplish their unlawful objective before being placed under any legal restraint"); *Seeler v. Trading Port, Inc.*, 517 F.2d 33, 38 (2d Cir. 1975)("Time is usually of the essence in these [Section 10(j)] matters [...]")(quoting Senate Report No. 105, 80th Cong., 1st Sess., 8 (1947)). A shutdown of the federal government could last weeks, or even months. Under this eventuality, the unlawfully terminated employee at issue in this proceeding would continue to be deprived reinstatement for the duration of the shutdown, and his coworkers would continue to harbor the belief that they, too, risk losing their jobs by exercising their rights protected by the Act. These are precisely the harms that Section 10(j) was designed to protect against.

Moreover, Petitioner cannot anticipate whether or not Congress will allow the necessary fund appropriations to lapse. If the past is any indication, the issue of the federal government's funding will not be resolved until the eleventh hour, and the duration of a possible shutdown is unknown. Rather than allow the uncertainty surrounding this predictable problem to disrupt the instant proceeding, Petitioner respectfully requests that Your Honor reschedule the hearing to avoid unnecessary complications to the adjudication of this matter.

Respondent will not be prejudiced by this request because Your Honor has allowed ample time – two weeks – for Respondent to prepare its answer, plus additional time to prepare for the hearing. Petitioner is not requesting that the deadline for filing an answer be changed, and is only requesting that the subsequent period of time be shortened by one day.<sup>1</sup> If anything, Petitioner will be the prejudiced party by having the review period of Respondent's answer shortened from seven days to six.

In sum, Petitioner respectfully requests that Your Honor resume proceedings and reschedule the hearing so that it will take place on or before February 8, 2018.

Very truly yours,

/s/ Brady Francisco-FitzMaurice

Brady Francisco-FitzMaurice

cc: Patrick L. Egan, Esq.

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<sup>1</sup> On January 23, 2018, counsel for Respondent informed Petitioner that Respondent opposes Petitioner's request.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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KATHY DREW KING, Regional Director of \*  
Region 29 of the National Labor Relations Board, \*  
for and on behalf of the NATIONAL LABOR \*  
RELATIONS BOARD \*

Petitioner

18-CV-399-JFB

v.

THERMO FISHER SCIENTIFIC INC.

Respondent

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Date: January 23, 2018

STATEMENT OF SERVICE OF: Letter dated January 23, 2018

I, the undersigned employee of the National Labor Relations Board, hereby state, under penalty of perjury that, in accordance with Federal Rules of Civil Procedure § 5(b) and NLRB Rules & Regulations § 102.114(a), a copy of the foregoing was filed by ECF and served on the below by e-mail on January 23, 2018.

Patrick Egan, Esq.  
EganP@Jacksonlewis.com

/s/ Brady Francisco-FitzMaurice  
Brady Francisco-FitzMaurice  
Counsel for Petitioner  
National Labor Relations Board, Region 29  
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